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Bryant C. Freeman, Ph.D.  
General Editor

*Sara Lechtenberg*

*An Overview  
of the  
Haitian  
Justice System*



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## AN OVERVIEW OF THE HAITIAN JUSTICE SYSTEM

This is the eleventh in a series of documents concerning Haiti to be made available through the University of Kansas Institute of Haitian Studies. The present Paper is the result of an original investigation conducted by Sara Lechtenberg involving no less than eighteen personal interviews with Haitian judges and lawyers, as well as with several foreign observers highly knowledgeable concerning the Haitian justice system, in addition to a number of written sources. She previously studied Journalism and Haitian Studies as an undergraduate at the University of Kansas, and subsequently was graduated from the University of Kansas School of Law. Ms. Lechtenberg has made in all seven trips to Haiti and has recently served as a consultant for the United States Agency for International Development in Haiti (USAID/Haiti) concerning the administration of justice. She was awarded a Fulbright Scholarship to Haiti for 1996-97 in order to study Haiti's criminal justice system.

We believe the present study constitutes a valuable summary of the justice system in Haiti at the present time. The presence of the United Nations Mission in Haiti (UNMIH) affords that nation at least a temporary respite from organized armed internal political strife, during which period it is hoped that basic structural reforms can be carried out in its administration of justice helping to ensure future stability in both the civic and political sectors. Without rule by law, no nation can long prosper.

Bryant Freeman

## CONTENTS

|      |   |    |
|------|---|----|
| I.   | The Justice System  | 1  |
| A.   | Written Laws  | 1  |
| B.   | Court Structure   | 4  |
| C.   | (In)justice System  | 4  |
| II.  | Problems With the Haitian Justice System                      | 6  |
| A.   | Weapons   | 7  |
| B.   | Judges  | 9  |
|      | 1. Inadequate Nomination and Recruitment Procedure            | 9  |
|      | 2. Judicial Corruption  | 10 |
|      | 3. Unqualified Judges   | 11 |
|      | 4. Inadequate Judicial Education Programs                     | 11 |
|      | 5. Low Respect for Judges                                     | 11 |
|      | 6. Ineffective Disciplinary Council                           | 12 |
| C.   | Lawyers   | 13 |
| D.   | Modern Legal System Misunderstood and Mistrusted              | 13 |
| E.   | Justice System Inaccessible                                   | 14 |
| F.   | Disorganization   | 14 |
| G.   | 1987 Constitution Criticized                                  | 15 |
| H.   | Inadequate Law Enforcement                                    | 15 |
| I.   | Lack of Infrastructure and Basic Equipment                    | 16 |
| J.   | Multinational Forces Aligned with Former Human Rights Abusers | 17 |
| K.   | "Street Justice"  | 17 |
| III. | Conclusion  | 19 |
|      | Interviews  | 21 |
|      | Endnotes  | 23 |

October 15, 1994 marked the return of Haiti's first democratically elected president, ending three years of military dictatorship. Jean-Bertrand Aristide, elected in 1990 by a 67 percent majority, preaches a message of reconciliation. Not far from the National Palace hang banners which read "Respect Life," and the building that once served as military headquarters now houses the newly created Ministry of Women's Affairs. During the days following Aristide's return, the talk on the radio and in the market is of "democracy" and "justice." But democracy and justice are not just the current topics of conversation in Port-au-Prince; foreign nations and non-governmental organizations have pledged nearly a billion dollars to Haiti to help build a stable democracy.

In an August 1994 statement, the Aristide government stressed the importance of developing a strong justice sector:

[T]he second cornerstone for both a peaceful democratic society and a prosperous economy is represented by the establishment of an independent Judiciary that is able to fairly arbitrate conflicts among the members of society, and provide adequate protection for private sector activity, property rights and fundamental human rights.<sup>1</sup>

As Haiti moves from military dictatorship to democracy, many people are looking closely at the problems that have plagued the Haitian justice sector. This paper will provide a brief sketch of both the legitimate Haitian justice system and the (in)justice system that has ruled Haiti in the past. After providing this background, the problems that currently plague the Haitian justice sector will be evaluated. This evaluation is drawn from interviews conducted in January 1995 with members of the Haitian legal community, human rights observers, and others directly involved in the justice sector. In conclusion, a personal perspective on the future of the Haitian justice sector will be presented.

## **I. THE JUSTICE SYSTEM**

### **A. Written Laws**

In 1492 Christopher Columbus claimed Haiti for the Spanish, but the dominant influence on the legal development of Haiti came only later, from the French. In the 1697 Treaty of Ryswick, Spain officially recognized France's right to what is today Haiti.<sup>2</sup> During the French colonial period, "Le Code Noir" served as the law of Haiti.<sup>3</sup>

During the colonial era, the French used African slave labor to produce sugar, cotton, indigo and other cash crops for Europe. After close to 300 years of exploitation, slaves rebelled against the French colonists, and Haiti won its independence in 1804. Between 1804 and 1825, chaos dominated the Haitian justice sector. During this period, Haiti's presidents

issued diverse laws called "Imperial Ordinances," but many people found these regulations confusing.<sup>4</sup> In response to this confusion, the Haitian Government created a nine-member commission to prepare a civil code following the Constitution of 1816. Two years later, the nine-member commission presented a draft which was essentially a replica of France's Napoleonic Code.

French jurists wrote the French Civil Code promulgated by Napoleon in 1804. The French code reflected European law prior to 1804, but also addressed the newer ideology of the "liberal" revolution of the French.<sup>5</sup> These codes were written with the utopian idea that the average citizen could read and understand the law, and the Civil Code could sit next to the family Bible in every home to provide guidance on legal matters.<sup>6</sup>

Just as the French Civil Code is divided into 35 "laws," the Haitian Civil Code has 35 corresponding "titles." Some of the articles present in the French Civil Code did not appear in the Haitian Civil Code, thus reducing the initial number of articles from 2281 to 2047.<sup>7</sup>

Soon after adopting the French Civil Code, Haiti adopted the French Commercial, Criminal, and Procedural Codes. Only slight modifications were made to the French Codes prior to passage, and these Codes still serve as the backbone of the Haitian legal system.<sup>8</sup> New legislation is published in the Haitian government's official gazette, *Le Moniteur*, and through the process of codification, new laws are integrated into the codes.<sup>9</sup>

In the civil law tradition, legal analysis is based on a hierarchy of legislation, regulations, and customs, with constitutional law assuming importance only recently. The primary source of law is legislation, not judge-made law. Haitian lawyers and judges rely on the writings of French legal scholars and court decisions to aid in the interpretation of code provisions.

Haiti has had no less than twenty constitutions since winning independence from France in 1804. According to one source, the large number of constitutions is due to the fact that, rather than using amendments as seen in the United States Constitution, Haitian leaders proclaim a new constitution each time a change is made.<sup>10</sup> Other civil law countries with more stable political environments have also had more than one constitution; for example, France has had nine constitutions since 1798, with its latest constitution serving only since 1958.

In many of Haiti's constitutions, the new president grants himself the right to rule for life as well as the right to name a successor. Haiti's first constitution, promulgated in 1801 by Toussaint Louverture, contains these same two provisions,<sup>11</sup> and well over a century later the four constitutions promulgated by François Duvalier continued to have this same authoritarian element.<sup>12</sup>

The French influenced the early development of Haitian law, but the United States directly impacted Haitian constitutional law during its 1915 to 1934 Occupation. The US

influenced the 1918 and 1932 Constitutions in many ways. First, those written during the U.S. Occupation were the first to allow foreigners the right to own land in Haiti. Second, these constitutions had provisions that validated the acts of the American authorities during the Occupation. Additionally, the presidential term was reduced from seven to four years.<sup>13</sup>

The current constitution, written shortly after the departure of Jean-Claude Duvalier, was approved by public referendum in 1987, suspended in 1988 by General Henri Namphy, and reinstated in 1989.<sup>14</sup> Drafters of the 1987 Constitution looked to earlier Haitian Constitutions, foreign constitutions, the abuses of the Duvalier era, as well as incorporating personal ideologies.<sup>15</sup>

The 1987 Constitution departs from the authoritarian trend of past constitutions and focuses instead on individual liberty. It guarantees the right to life, freedom of speech, freedom of assembly, and freedom of religion. Additionally, Number 20 abolishes the death penalty.

One example of the focus on individual rights is Number 24-3(5). This provision states: "*Chak moun reskonsab tèt yo. Yo pa gen dwa arete pèsonn moun nan plas yon lòt moun.*" ("Responsibility is personal. No one can be arrested in place of another.") It had been common for police to arrest a friend or relative instead of the accused when the person officially charged could not be found, and the 1987 Constitution seeks to remedy this injustice.

The 1987 Constitution mixes realism and optimism. For example, Number 32-2 states: "*Premye travay Leta, ak moun ki alatèt chak zòn peyi a, se fè yon jan pou tout moun rive al lekòl. Se sèl jan yo va kapab mete peyi a sou wout pwogrè vre.*" ("The first responsibility of the State, with community leaders, is to make it possible for every person to go to school. Only in this manner is it possible to put the country on the true road to progress.") In this provision, and in many others like it, the drafters acknowledge the massive problems that Haiti must overcome, and constitutionally require the State to serve as a force of change, rather than as a force of repression.

According to some writers, the provision in the 1987 Constitution which speaks most clearly of the abuses of the Duvalier regime is Article 291. This provision establishes that for ten years following the publication of the constitution, no person previously affiliated with the Duvalier regime may be a candidate for public office. According to Haitian civil rights activist Jean-Claude Bajeux, article 291 made the 1987 Constitution very popular with the majority of Haitians who "went into the streets shouting their joy and approval" once the article was read over the radio.<sup>16</sup>

The right to a jury trial in criminal and civil cases is present in early Haitian Constitutions, but this right has not been consistently maintained in later constitutions. The 1843 Constitution granted the accused the right to a jury trial for all offenses, whereas the 1928 Constitution establishes that a jury trial is granted only "for such criminal cases as the law will determine."<sup>17</sup> Today, Criminal Courts empanel a jury only for cases involving violence.<sup>18</sup>

Of particular impact on the Haitian legal system is Number 276-2. This provision establishes that all ratified international treaties are incorporated into Haitian law and supersede any conflicting domestic legislation. Haiti is party to many international human rights and trade treaties and these covenants take precedence over domestic law.<sup>19</sup>

## **B. Court Structure**

The Law of 1985 divides the Haitian Court system into 15 districts. The justices of the peace sit at the lower level of the judicial hierarchy and have jurisdiction over both civil matters and minor criminal offenses. The primary responsibility of the justice of the peace is to reconcile disputing parties, and their decisions may be appealed to the trial court level.

The justice of the peace refers more serious civil and criminal offenses to the Office of the Public Prosecutor. The duty to investigate serious crimes is handled jointly by the Office of the Public Prosecutor and the Investigating Judge.

In the common law tradition of England and the United States, there is no Investigating Judge. In civil law countries, judges are responsible for investigation and adjudication. This joint responsibility to investigate is seen in the French system where police, prosecutor, and the judicial official are charged with investigative responsibilities.

Once the Public Prosecutor and the Investigating Judge decide to pursue criminal sanctions, the severity of the crime determines which court will try the case. The Correctional Courts handle felonies punishable by a maximum of five years imprisonment, and the Criminal Courts try cases in which conviction may result in life imprisonment.

The four Courts of Appeal hear cases from the lower courts. The Supreme Court, the Cour de Cassation, is the court of last resort and hears only cases appealed from the lower courts. Similar to the United States Supreme Court, the Cour de Cassation does not retry cases appealed from the lower courts, but rather reviews the lower court's decision and rules on the constitutionality of laws.<sup>20</sup> If the Cour de Cassation finds an irregularity with the lower court ruling, the justices remand the case for further adjudication.

## **C. (In)justice System**

On paper, Haiti has clear rules governing which court has jurisdiction to adjudicate a claim and which law to apply. In reality, written law has not been followed.

The highest law has been the law of men, rather than the law of the Constitution. According to one writer,

Haitians have lived for the past 200 years in a state of non-law under a "just-us" or injustice system where only a limited few receive benefits and the rest who

resort to the judicial system are subject to its haphazard operation and/or corruption.<sup>21</sup>

Other sources call the (in)justice system the "Gwo Nèg" or "Big Man" system.<sup>22</sup> The most powerful person in the community, the "Gwo Nèg," has dominated all aspects of life and what this person said always overruled any written law. The position of "Gwo Nèg" has varied with the change in ruling political parties, but typically a military official, a member of a paramilitary organization, a member of the executive branch, or a wealthy individual has filled the "Gwo Nèg" position.

The section chief, similar to a county sheriff in the United States, served as "Gwo Nèg" during the Duvalier years. One grassroots group, Tèt Kole Ti Peyizan Ayisyen, claims that under the section chief system, a farmer living in rural Haiti in the 1990s enjoys no more freedom than did his slave ancestors in the 1790s. Under the "Gwo Nèg" system, section chiefs commonly forced peasants to work for free, and anyone who challenged the power of the section chief was silenced through torture or death.<sup>23</sup>

One member of the Haitian judiciary, a justice of the peace, gives the following description of the power of the section chief:

The section chief and his assistants establish their own administration; they arrest and try people themselves and do not involve the justice of the peace or the civil court system at all... The justice of the peace does not know what is going on in the hills.<sup>24</sup>

Another person who filled the "Gwo Nèg" position during the Duvalier era was the local "Volunteer For National Security" chief -- better known as the local head Tonton Macoute. His power eclipsed the judicial authority of the local magistrate, and by swearing allegiance to the Duvalier regime, he had the power to arrest, try, and execute.<sup>25</sup>

After Duvalier fell in 1986, military domination of the justice sector continued. Some leaders attempted to limit the "Gwo Nèg" system but were largely unsuccessful.<sup>26</sup>

Under the Aristide government the "Gwo Nèg" injustice system continued. During the eight months prior to the 1991 coup, a local Aristide supporter or an appointee from the Ministry of Interior served as "Gwo Nèg" in the community.<sup>27</sup>

Sources disagree as to how effective Aristide was in developing a strong justice sector in the eight months he served as president prior to the September 1991 coup. Supporters claim he worked to create an environment in which the rule of law would prevail over the "Gwo Nèg" injustice system for the first time. Pro-Aristide groups point to the dissolution of the section chief position, the arrest of leaders of crime rings, anti-corruption campaigns in government, and attempts to control the drug trade as significant strides toward the establishment of a free and fair justice sector.<sup>28</sup>



Others claim Aristide weakened the rule of law by encouraging crowds to seek justice in the streets rather than justice in the courts. Critics point to several of Aristide's speeches and say he encouraged the masses to usurp the judicial process. Human rights organizations, many of which are traditionally supportive of Aristide, say he should have spoken out against a system based on vengeance and mob violence.<sup>29</sup>

Shortly after the September 1991 coup in which Aristide was overthrown, the military regime revived the section chief position. Amnesty International found that repression in the countryside had increased with the reinstatement of the section chiefs.<sup>30</sup> The section chief or an ally of the military served as "Gwo Nèg" during the three years that Aristide was in exile.

In the summer of 1993 allies of the military regime formed the paramilitary organization called Front pour l'Avancement et le Progrès d'Haïti (FRAPH). FRAPH members say their organization was a legitimate political party, but human rights organizations and embassy sources document that FRAPH served as a front for the military.<sup>31</sup>

Although Aristide returned to power in Haiti, the transition to a system based on written law was not automatic. According to the United States Agency for International Development (USAID), the "Gwo Nèg" justice system continues. Power is not evenly distributed in the justice sector and currently the prosecutors--members of the legitimate justice sector--hold the position of "Gwo Nèg."<sup>32</sup>

These prosecutors are able to dominate the justice system because they have the power to decide which cases warrant trial. USAID points out that prosecutors frequently pursue meritless claims against enemies and avoid pursuing politically sensitive cases.<sup>33</sup>

Members of the Haitian legal community believe that the transition from the "Gwo Nèg" system to a modern justice system will be difficult. According to Port-au-Prince attorney Patrick Woolley, "Haiti is currently operating under what is legitimate rather than what is legal." Woolley contends that Haiti is not following the strict letter of the Constitution; instead there is an attempt to follow the spirit of the law.<sup>34</sup>

William O'Neill, Senior Policy Advocate for the National Coalition For Haitian Refugees, says this "extra-legal" transition period is required in order to move from a non-law system to one in which written laws will govern.<sup>35</sup>

## **II. PROBLEMS WITH THE HAITIAN JUSTICE SYSTEM**

### **Dèyè Mòn, Gen Mòn**

**(Literal Translation: Behind mountains, there are mountains.  
Cultural Significance: Behind one problem lies another problem.)**



This Haitian proverb accurately describes the status of the Haitian justice sector. At first glance, an observer sees the major obstacles, but upon closer inspection, additional problems come into focus.

The following pages present a look at some of the principal problems concerning the Haitian justice sector. This is by no means a comprehensive, scientific evaluation of the problems, but rather presents the results of three weeks of informal interviews with members of the Haitian legal community. In order to gain a wide range of perspectives, both conservative and liberal members of the Haitian justice sector were consulted, along with a broad spectrum of human rights organizations. The intention has been to present this information in an objective manner, and personal views will be reserved for the conclusion.

#### **A. Weapons**

**"Melt the weapons and turn them into tools, please."**  
(A member of a Haitian women's cooperative)<sup>36</sup>

Many sources believe the high level of weapons among former military and paramilitary organizations blocks the development of a strong justice sector. Necker Dessables, Executive Secretary for the Justice and Peace Commission, says the justice sector continues to be held ransom.

In 1993 and 1994 people didn't want to make arrests because of pressure from the military. Now judges don't want to pursue cases because of the same pressure -- there is no security. Judges say that they don't have the authority or the paperwork to arrest people, but this is just an excuse to mask their fear of retribution from those who are armed. The fear is still there.<sup>37</sup>

Although Aristide has abolished the military, there are still many weapons in Haiti. Members of the Haitian military kept their firearms when they left their positions and approximately two hundred thousand guns are held by the former military and the still active paramilitary organizations.<sup>38</sup>

The Ecumenical Program on Central America and the Caribbean reports that people in the countryside continue to be attacked, terrorized, and killed by paramilitary attachés and Haitian military even after Aristide's return.<sup>39</sup>

Yves Denizé, a New York attorney who visited Haiti on behalf of the Lawyers Committee for Human Rights, sees the high level of weapons among former military and paramilitary organizations as a major barrier. According to Denizé, former members of the military and paramilitary forces are "fully armed and ready to go into action once the Multinational Force (MNF) is gone."<sup>40</sup>

Many human rights organizations warn that without an aggressive disarmament campaign, the upcoming elections for the Haitian legislature will be dangerous. Elections are

scheduled to be held in June, but according to a Pax Christi human rights observer who visited Haiti in December, many people fear the elections will be violent.<sup>41</sup>

The Commission for Justice and Peace also believes that a safe and fair election will not be possible if there is no disarmament. Necker Dessables points to the 1987 elections which were canceled after armed military and paramilitary organizations killed voters at polling stations. Dessables explains, "We have the 1987 elections as a souvenir... Only those with guns will vote [in the upcoming elections] and this will be a de facto coup. A coup in the ballot box."<sup>42</sup>

Pax Christi observers met with Colin Granderson, the head of the OAS-UN Observer Mission, who stated that the US and MNF have effectively stopped searching for arms.<sup>43</sup>

One barrier to an aggressive disarmament campaign is the 1987 Constitution. Numbers 268-1 through 268-3 address the right to bear arms. The 1987 Constitution provides that citizens have the right to use a gun in self-defense in the home and may carry a gun with the permission of the chief of police.<sup>44</sup>

The Lawyers Committee For Human Rights reports several possible reasons for the lack of an aggressive disarmament campaign. In addition to the legal constraints of the 1987 Constitution, an active program would require additional work for the MNF, and there would be an increased risk of casualties. Also, many of the MNF do not see the need for an active disarmament campaign; one US military official explained that the crime levels in Haiti do not merit an aggressive disarmament campaign. To this individual, and to a great number of the US military, disarmament programs are conducted in response to crime problems. Currently, the US forces either do not see a need for a disarmament campaign because they do not see a high probability for a resurgence in human rights abuses, or they choose not to actively disarm because of political ramifications.<sup>45</sup> According to General Joseph W. Kinzer, commander of United Nations Forces in Haiti, the UN mandate does not authorize an active disarmament program.

Several sources criticize the disarmament campaign the MNF ran during the early days of the occupation and say the practice of using the Haitian Armed Forces in the disarmament process was unwise. Human rights organizations question whether a disarmament campaign can be effective if those who disarm are allied with those who are being disarmed. The MNF and the Haitian Armed Forces conducted all weapon searches jointly and the Haitian Armed Forces were informed of the time and place for searches. When former military members were scheduled to be searched, the current Haitian military were able to warn former colleagues of the impending search.<sup>46</sup>

## **B. Judges**

### **"Cowed, corrupted and often incompetent"** (Lawyers Committee description of the Haitian Judiciary)

Regardless of political affiliation, regardless of wealth, and regardless of power, the subject that every member of the legal community agreed upon was the need to develop a strong core of judges.

Eva Tabuteau, the former director general of the Ministry of Justice, spoke of the need for an improved judiciary shortly after Aristide's return. "All judges will be fired. There are 500 now and we have to get rid of them. We have to find judges we trust."<sup>47</sup>

In a January 1995 meeting, Ms. Tabuteau revised her statement and said that not all of the judges needed to be fired, but only a large proportion. Tabuteau said, "Haiti needs honest, competent judges so people will have confidence in the system... If you know you are going to be judged, you will reflect before you do something."

#### **1. Inadequate Nomination and Recruitment Procedure**

Historically the nomination and recruitment process for the Haitian judiciary has been corrupt. The 1987 Constitution establishes that judges are to be nominated by the communal assemblies and then the president makes the final determination from this candidate list. In reality, this nomination process has not been followed.

As of December 1994, judges were still not being appointed according to the Constitution. According to several sources, it would take a minimum of six months for the Communal Assemblies to meet and present the president with candidates for the open positions on the bench. The executive branch did not follow the constitutionally mandated nomination process, but rather directly named judges to the Supreme Court.

In the past, the prerequisites for becoming a judge were money and political connections rather than legal scholarship or courtroom experience. Some sources contend that judges have been able to buy their positions on the bench. The practice of purchasing a judgeship is not foreign to the civil law tradition. According to one comparative law scholar, prior to 1798, French judgeships were regarded as property which could be purchased and kept in the family.<sup>48</sup> It is not a far leap to say that Haitian judges have been able to purchase their positions on the bench, but typically this right to serve on the bench does not descend to one's survivors.

In the book *Paper Laws, Steel Bayonets*, the Lawyers Committee for Human Rights provides a statement by a Haitian lawyer summarizing the inadequate judicial recruitment process:

Because there is no system of recruiting, whoever (the military) recommends... is accepted and the military, whoever they are, will have power. The guy who wants to become a judge might as well have the support of the military officer in order to get there, and then after he gets there, he cannot be tough with that officer who, in some instances, is also a police officer.<sup>49</sup>

In the December 1994 report, the Lawyers Committee stresses that the inadequate recruitment process for judges is a key issue that needs to be addressed. According to the Lawyers Committee, the judges and attorneys unanimously agreed that long-term improvements in the Haitian judiciary would be achieved only if screening regimens are established to weed out unqualified judicial candidates.<sup>50</sup>

## **2. Judicial Corruption**

**The Court is a boutique. A judge is a person who sells justice and the person who gives the most money wins the case.**

(Necker Dessables, Justice and Peace Commission)

In that the judicial nomination process is often corrupt, it is not surprising that this corruption is carried over onto the judges' work on the bench. Judicial corruption takes many different forms, but it is typically motivated by money and politics.

One extreme example of judicial corruption took place after the fall of Jean-Claude Duvalier. In US and French courts, legal proceedings to recover stolen money were commenced against some of the Haitian elite loyal to the Duvaliers.<sup>51</sup> Two Haitian judges and two law clerks forged documents that resulted in the US and French courts dismissing the charges.<sup>52</sup> When the cases were dismissed, the assets of the Haitian elite were released, and none of the money that the elite allegedly stole was ever returned. The judges who forged the documents were fired from their positions, but the Haitian government did not charge them with any criminal offense.<sup>53</sup>

The Lawyers Committee links judicial corruption to an increase in violence. The December 1994 report highlights how some judges will accept bribes from both the plaintiff and the defendant in a land dispute, telling both parties that they have legal title to the property. Later, when both parties seek to enforce what they believe to be their legal right to the land, there is an increased risk of violence.<sup>54</sup>

Many of the attorneys said that the low pay for judges is directly related to the problem of corruption. In Port-au-Prince, the lowest level of the judiciary receive the equivalent of \$450 US dollars a month while the highest level are paid approximately \$1,500 a month. According to one source, a driver at the US embassy makes a higher salary than does a justice of the peace. Although the 1987 Constitution prohibits judges from having jobs other than teaching, the low pay forces many judges to take other paid positions.<sup>55</sup>

### **3. Unqualified Judges**

According to Rigauld Duplan, President of the Port-au-Prince Bar Association, the low pay for judges not only leads to corruption, but also makes it difficult to find good candidates to serve on the bench. Because attorneys can earn more money in the private sector, becoming a judge is not an appealing prospect. Justices of the peace are required to have law degrees, but many outside of Port-au-Prince have no formal legal training.<sup>56</sup>

As evidence of an unqualified judiciary, the former president of the Port-au-Prince Bar Association points to the fact that many judges do not conduct independent research. Gary Lissade states that many judges rely on the research of the attorneys and never bother to investigate the law.<sup>57</sup>

The lack of independent judicial research may be attributed to laziness, or to the fact that most judges do not have access to legal texts. Unlike American judges, most Haitian judges do not have a private library. If a judge questions a point of law, he must go to a private library or to the Bar Association library to find the legal text.

### **4. Inadequate Judicial Education Programs**

Article 176 of the 1987 Constitution mandates the establishment of a school for judges. The Haitian government has not established such an institution, but all sectors of the legal community are calling for a judicial training program.<sup>58</sup>

USAID has developed a short-term judge training program with the help of the National Center for State Courts and the Department of Justice. In this short-term program, the lower-level judges spent five days learning criminal law, criminal procedure, and investigation techniques. USAID plans to run this program in Port-au-Prince for three weeks before implementing it in the provincial towns for an additional five weeks.<sup>59</sup>

Critics of the USAID judge training program say a five-day "crash course" is more symbolic than substantive. Other critics contend that a judge training program should originate from the Port-au-Prince Bar Association and not from a United States Agency.<sup>60</sup>

In response to criticism, USAID emphasizes that this short-term judge training seminar will lay the foundation for a long-term judge training program as well as for other projects currently being developed to strengthen the Haitian judiciary.

### **5. Low Respect for Judges**

In one session observing a justice of the peace holding court at the National Penitentiary in Port-au-Prince, the lack of respect for the judiciary was readily apparent. Defendants screamed at the judge, refused to participate in the proceeding, and the court clerk constantly threatened to leave. The lack of respect for the judge was abundantly clear from this setting.

It is important to note that there are differences between the role of judge in the Common law tradition of the United States and the judicial function in the civil law tradition of France and Haiti. First, in the French civil law tradition, the judicial branch evolved in a manner in which judges were not given a great deal of power. Prior to the French Revolution, judges were distrusted and sometimes corrupt. According to comparative law scholar John Merryman, this distrust of the French judiciary led to a limited role for judges in the legal process.<sup>61</sup>

Judges in the Common law tradition of England and the United States have been afforded a greater degree of respect, due in part to the fact that judges in these countries were chosen because of their legal ability. Edward I chose England's judges from the leaders of the Bar, whereas French judges were chosen from the civil service.<sup>62</sup>

In addition to the different historical evolution of the judiciary in the civil law tradition, the process by which an individual becomes a judge is different. In the common law tradition, an individual becomes a judge after many years of working in the justice sector, and the public considers a judge to be something of a patriarch. In the orthodox civil law tradition, a law student attends a judge training program directly after law school to become a member of the judiciary, and consequently the public considers a judge to be a civil servant.

Historically, no judge training school has existed for law students in Haiti. According to one source, judges learn their work on the job and do not even receive training by working with an experienced judge.<sup>63</sup>

Although the civil law tradition does not afford judges the same level of respect as does the common law tradition, the majority of sources said there needs to be some improvement in the quality of Haitian judges as well as a greater level of respect accorded the Haitian judiciary in order to improve the Haitian justice system.

## **6. Ineffective Disciplinary Council**

Several attorneys believe the Haitian judiciary will not improve unless an effective disciplinary body is developed. The Conseil de Discipline de la Magistrature is charged with weeding out corrupt and inefficient judges, but this disciplinary body is composed of other judges. Typically the judges who serve on the disciplinary council are unwilling to speak out against a colleague. This system of self-review helps maintain a body of sub-standard magistrates.



## **C. Lawyers**

**"Lawyers are seen as robbers and thieves."  
(Law Professor Elie Méus)**

In many countries, lawyers are not afforded the highest level of respect, but the lack of respect for lawyers in Haiti is particularly acute. The image problem may be due in part to the fact that many of the best attorneys have left Haiti because of the political instability.<sup>64</sup> According to William O'Neill, this "brain drain" has left the less talented members of the legal community--"mainly flunkies, lackies and those who bought their law degrees" to serve as attorneys.<sup>65</sup>

Many of the Haitian attorneys who have fought for a strong justice system have paid the price with their lives. Perhaps the most striking example of the risks involved in being an outspoken attorney is the October 1993 assassination of Justice Minister Guy Malary.

In civil law tradition, lawyers are generally not afforded the same level of respect found in the common law tradition. In writing the civil law code of France, drafters hoped to make the law clear enough that ordinary citizens could understand the law and would not need the services of a lawyer in court.<sup>66</sup>

## **D. Modern Legal System Misunderstood and Mistrusted**

With an illiteracy rate of 85 percent, many people are unable to understand the value of a modern justice system. According to Uranie Orival Nadar, a Justice of the Peace in Port-au-Prince, "People don't go to school, they don't understand law, they can't understand anything in the court system."<sup>67</sup>

Several lawyers explained that many people do not draw a distinction between the crime of the defendant and the role of the lawyer. When the lawyer agrees to represent a criminal defendant, in many people's eyes, the lawyer is also committing a crime. According to Gervais Charles, a lawyer in Port-au-Prince, the physical risks involved with being a defense attorney are real. "If I give a criminal defendant representation, I will be seen as an accomplice." The president of the legal aid society L'Amicale des Juristes echoed the same belief. "Other people who are against my client are against me too. They wait for you outside the courthouse."

The general public has little trust in the court process. Many times when the general public does not trust that a court proceeding will result in the outcome they desire, crowds will gather outside the courthouse and will interfere with the judge, jury, and legal counsel. Sometimes crowds will block lawyers from entering the courthouse and the judge will enter a default ruling against the side whose lawyer is absent. According to Rigauld Duplan, public strikes outside the courthouses intimidate every person involved and make a fair trial impossible.<sup>68</sup>

Many lawyers in Port-au-Prince believe that in order to develop an effective justice system, there needs to be an overall improvement in the education system in Haiti. Without greater access to education, it will be difficult for the general public to understand the value of a modern justice sector.

According to law professor Elie Méus, respect for written law in Haiti is low. Méus says, "I would like for everyone to have respect for the law. We don't have that yet, but we will fight for it."

#### **E. Justice System Inaccessible**

According to René Julien, President of L'Amicale des Juristes, one of the biggest problems with the justice sector is that it is inaccessible to the common person. Julien says, "No money means no access. If you don't have work, you don't have money to pay an attorney."<sup>69</sup>

Haiti has no public defender program. The Haitian Bar Association has regulations in place for recent law school graduates to serve as legal counsel to the poor,<sup>70</sup> L'Amicale des Juristes trains paralegals to serve in the countryside, and many lawyers provide free legal assistance to the poor, but these organizations and individuals are not able to provide legal representation for the vast number of needy clients. The lack of money to pay for legal services, combined with the unwillingness of many lawyers to practice criminal law, results in many criminal defendants being convicted and imprisoned without ever consulting with an attorney.<sup>71</sup>

#### **F. Disorganization**

In the Haitian justice sector, chaos is the norm. Upon taking office, former Minister of Justice Malbranche decided to write all judges a memo to tell them to be on time for work. Malbranche was unable to send the memo because he did not know how many judges Haiti had and did not have an accurate listing of where the judges could be reached.<sup>72</sup>

Several attorneys mentioned the lack of a judicial calendar as a prime example of the disorganization that plagues the Haitian justice sector. When a case is filed with the court, a judge is assigned to the case, but the judge never schedules a specific date to hear the case. The attorney must appear in court and wait long hours before the judge calls the case. Even when the judge decides to adjudicate a claim, many times there will be additional delays if one of the required parties is absent.<sup>73</sup>

According to lawyer Chantal Ewald Hudicourt, the only thing that works efficiently in the Haitian court system is the person who types the final judicial order, because this person is paid per case typed.<sup>74</sup>



Others contend that the court structure breeds chaos. The Investigating Judge and the Prosecutor share responsibility for investigating crimes and this joint responsibility adds to the chaos of the system, causing abdication of responsibility. Essentially, the Investigating Judge assumes that the Prosecutor is investigating a case, but in reality neither side takes the initiative to investigate crimes thoroughly.<sup>75</sup>

#### **G. 1987 Constitution Criticized**

Many members of the legal community in Haiti voiced criticism of the 1987 Constitution. According to the president of L'Amicale, the Constitution was "[B]orn of passion, born of emotion, but never applied." Julien contends that the laws found in the 1987 Constitution are mere words because "People did not have the courage to apply the laws of the Constitution."<sup>76</sup>

The Port-au-Prince Bar Association President sees the 1987 Constitution as being unclear and unenforceable. Rigauld Duplan points out that the 1987 Constitution provides for one "Provisional Council" to monitor the first round of elections, and then requires that a permanent council be established to monitor all subsequent elections. A provisional council guided the 1990 elections, and according to the 1987 Constitution, a permanent council should have been established for the upcoming elections. A second provisional council is being formed for the current election rather than a permanent council, and Duplan considers this unconstitutional.

American commentators have categorized the 1987 Constitution as an aspirational document rather than as a realistic legal guide for Haiti. These commentators point to provisions that guarantee classroom facilities for elementary school students and paid annual vacations for every worker as evidence of the aspirational nature of the document.<sup>77</sup>

#### **H. Inadequate Law Enforcement**

Historically, the Haitian military and police have served as a repressive force rather than as enforcers of the law. When Aristide returned in October 1994, many members of the police force deserted their positions, and the US military reported that the Haitian police force had "virtually disappeared."<sup>78</sup>

Law enforcement in Haiti is being provided by the Multi-National Force (MNF) and an interim force of Haitian police. The MNF and a Haitian official make all arrests jointly. According to US forces stationed at the National Penitentiary in Port-au-Prince, the MNF acts independently of the Haitian police only when a crime takes place in its presence.

The International Criminal Investigative Training Assistance Program (ICITAP), a US Justice Department agency, has trained an interim force of police. The US-sponsored program trained former members of the Haitian Armed Forces in a six-day course to provide temporary law enforcement.<sup>79</sup>

Human and legal rights advocates criticize the interim police force because it is composed of the former military and police. Some human rights organizations question whether an individual can be retrained to provide law enforcement if he has worked for years as a member of a repressive military regime.

Supporters of the ICITAP program say human rights abusers were eliminated from the interim police force through a vetting process. The candidate list was checked against the Aristide government's records of human rights abusers and the OAS/UN Civilian Mission records of human rights offenders. In addition, the State Department's International Narcotics Matters Bureau reviewed the interim police force candidate list.

Critics of the vetting process point to the fact that no Haitian human rights organizations were allowed to participate in the vetting process, and after the United Nations and the Aristide government turned over their records, no other outside groups had contact with the vetting process.

Others point to the low number of candidates who were eliminated from the list as evidence that the process was ineffective. At the end of November, out of the thirteen hundred and fifty soldiers and officers whose records were examined by the vetting committee, only about a hundred and fifty were excluded.<sup>80</sup>

A permanent force of police, selected from the general public, began an ICITAP-sponsored training program in February. Lawyers interviewed expressed the hope that this new force of police would serve as Haiti's first professional law enforcement body, but some worry that the new force will serve as a repressive regime. One lawyer said, "[T]he new police force will be successful if they have respect for their job and if the public has respect for them."<sup>81</sup>

## **I. Lack of Infrastructure and Basic Equipment**

**There was a jail break last month. Close to 100 inmates escaped, but people living around the prison helped catch the inmates.**  
(US Military Guard at the National Penitentiary)

The lack of structure and basic equipment is a problem that plagues the justice sector. Inadequate courthouses and insecure prisons are the norm. Courts lack basic materials such as typewriters and file cabinets, and most courts do not even have the basic legal texts. Many courts are without electricity or running water.

The US government has focused on providing basic equipment and legal texts, but has no immediate plans to assist in the construction of either courthouses or prisons. Two lieutenants from the US Army Civil Affairs Brigade conducted a survey of the prisons in Haiti and provided USAID with an overview of the status of the prison system. USAID has requested that the Department of Defense continue assessment of the prisons and has discussed a possible role for the International Red Cross in estimating the cost of prison construction.

## **J. Multinational Forces Aligned with Former Human Rights Abusers**

Acting under the authorization of United Nations Security Council Resolution 940, multinational forces began arriving in Haiti on September 19, 1994, with the directive of using all necessary means to ensure the departure of military leadership and to establish and maintain a secure and stable environment.<sup>82</sup> The multinational force was replaced on March 31, 1995, by the United Nations Mission in Haiti, comprised of military personnel from 34 nations (UNMIH). This contingent is responsible for sustaining a secure and stable environment.<sup>83</sup>

Some organizations have been critical of the MNF/UNMIH strategy for establishing a secure and stable environment. The Lawyers Committee For Human Rights contends that when the international forces work with members of the "old regime," the development of a strong justice sector is impeded. Typically, the primary contact with a community is with former military officials or a wealthy, English-speaking landowner. The local powerholders are able to communicate the message, "I'm here for Democracy." With this easy and understandable pledge, the international forces do not take additional steps to ensure that a safe environment exists. According to one source, "Many residents of Jérémie (a town in southwest Haiti) feel that the international forces are protecting these abusers and allowing them to continue to terrorize the town."<sup>84</sup>

The Haitian media reports many examples of the international forces working with the former military regime. On November 4, 1993, not far from the city of Jacmel, US troops and Haitian soldiers reinstalled the local section chief, despite the fact that the section chief position had officially ended October 31 of that year.

## **K. "Street Justice"**

Given the status of the Haitian justice system, it is not hard to understand why the average person would have little respect for the value of written law or a modern court system.

This lack of respect for the established court system and written law results in members of society taking justice into their own hands. For example, when a thief is caught stealing in the market, he is not turned over to the police and sent to jail -- he is killed.

To the average Westerner, this style of punishment seems harsh. But in a system where there has never been a reliable police force to make arrests, never been a neutral magistrate to evaluate guilt or innocence, and never been a reliable prison system to punish and rehabilitate, the law of vengeance reigns supreme.

Much in the same way that the accused thief is tried in the street because there is no functioning justice sector, many people fear that if there is no formal tribunal to adjudicate claims against human rights abusers, the "street justice" tribunal that has tried the small-time thief will also be used to try and punish human rights offenders.

The term *dechoukaj* is commonly associated with the vengeance-based justice system in Haiti. The literal translation of *dechoukaj* means to rip a weed out of the ground so it will not grow back. In the socio-political context, *dechoukaj* signifies uprooting the members of a fallen regime.

This tradition of violent uprooting can be traced back to when Haiti gained independence from France. Haiti's first leader, Jean-Jacques Dessalines, used the motto, "Cut Heads, Burn Houses" as a guide for the Haitian slaves who united to uproot French colonists. A violent uprooting was used after the fall of Duvalier when the Tonton Macoutes, Duvalier's private army, were burned in the streets at the hands of those whom they had repressed.<sup>85</sup>

Many people believe that the only way to avert violence against former powerholders is to establish a truth commission. Truth Commissions were organized in El Salvador during the transition from dictatorship to democracy in order to bring to light the abuses of the military regime.

In theory, if the average citizen believes he can find justice through a truth commission, there will be less of a desire to turn to "street justice." Theorists who have studied the use of truth commissions in other countries contend that such a mechanism provides the people with confidence that a system exists to punish those who break the law, and when the average citizen sees that everyone is subject to written laws, there will be increased respect for the justice system.<sup>86</sup>

Diane F. Orentlicher, the General Counsel for the International League for Human Rights, contends that by punishing the evildoers from prior military regimes, a country is able to strengthen the justice sector and the democratic institutions of the new regime. Orentlicher explains that these prosecutions help end the cycle of state violence by sending a message to the current administration that they will be held responsible for their actions.<sup>87</sup>

Critics say that as long as there is a continued threat of violence from the former military and still active paramilitary organizations, a truth commission will not be effective. According to Necker Dessables of the National Commission for Justice and Peace, "There can be no truth commission if there is fear..., if there is no disarmament, then people are scared to go for justice."<sup>88</sup>

On December 20, 1994, Aristide named Françoise Boucard to head a seven-member truth commission, but it has not been determined if the perpetrators of violence will still be subject to criminal and civil prosecution.<sup>89</sup>

### III. CONCLUSION

**It's not just the President of the Supreme Court who is deaf..., it is the whole justice system.**

(One observer's statement after pointing to the hearing aid of the President of the Supreme Court.)

**"The President of the Supreme Court is getting a Miracle Ear."**

(Port-au-Prince lawyer Gary Lissade)

Many people in the legal community believe the justice sector is irreparably broken and use the Haitian proverb, "Behind mountains, there are more mountains," to explain the desperate situation. Lawyers talk of corrupt and incompetent judges. Law professors point to the dilapidated law school. Law students mention there is no public law library. Judges point to the lack of respect for law among the general public. Legal rights associations highlight that the court system is inaccessible. Legal rights advocates and human rights groups worry that the high level of weapons will continue to intimidate all members of the justice sector.

Many in the international community take one look at these problems and turn their eyes away. They say, "It is not our mission to rebuild the Haitian justice system. They have a constitution. They have a penal code. They have a bar... It's up to Haiti now."<sup>90</sup> Other people say, "Haiti is not ready for democracy." These people see the obstacles blocking democracy and justice sector reform and say that they are impossible to overcome.

Although some people believe the Haitian proverb "Behind mountains, there are mountains" captures the essence of the Haitian justice sector as it stands today, those more hopeful point to another Haitian proverb, "*Men anpil, chay pa lou*" ("Many hands, the load is not heavy"). These people see the same problems, but hold the belief that with many people working together, it will be possible to build a system in which the rule of law prevails.

A strong justice sector will not be achieved overnight, but this is a crucial time to begin building institutions that will help Haiti move from a "Gwo Nèg" injustice system to one in which written law rules. In much the same way that countries formerly under communist rule are currently making a transition to a system governed by laws rather than dictators, Haiti too can begin this transition. Possibly with the lack of a "Gwo Nèg" in the community, Haiti can move to a system in which the rule of law is established.

The pessimists are in some ways correct when they say it is impossible to "build" a justice system for Haiti. The international forces can help establish a safe environment, USAID can help develop judge-training programs, and non-governmental organizations can donate legal texts and basic supplies, but they cannot "build" a legal institution. It is up to Haitians to break from the "Gwo Nèg" system and to develop a tradition based on written law.

I had the opportunity to meet many members of the Haitian legal community, both conservative thinkers and radical advocates, who want to bring a tradition of law to Haiti. With many nations focusing on Haiti and with the desire of the vast majority of Haitians to build a true democracy, together Haiti can build a system that can truly be called just.

## **INTERVIEWS**

**Me. Justin Castel**  
Dean of the Law School of the State University of Haiti

**Me. Gervais Charles**  
Cabinet Laforest-Charles and Associates

**Me. P. Delienne**  
Cabinet Duplan

**Yves P. Denizé**  
New York lawyer who traveled to Haiti in December 1994 as a representative of the Lawyers Committee for Human Rights

**Necker Dessables**  
Secrétaire Exécutif National  
Commission Nationale Justice & Paix

**Me. Rigauld Duplan**  
President of Port-au-Prince Bar Association

**Dan Grippo**  
Pax Christi Observer

**Kitty Hall**  
USAID/Haiti

**Me. Chantal Ewald Hudicourt**

**Me. Jacob Jean-Baptiste**  
Chef du Personnel Administratif de la Cour de Cassation

**Me. René Julien**  
President, L'Amicale des Juristes

**Me. Gary Lissade**

**Me. Elie Méus**  
Professor of Law, Port-au-Prince

**Me. Uranie Orival Nadar**  
Justice of the Peace, Section Nord

Jane Nandy  
USAID/Haiti

William O'Neill  
National Coalition for Haitian Refugees

Me. Eva Tabuteau

Me. Patrick Woolley



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